

Joseph Nagle, Esq;

Appellant.

George Foot, Penelope Purdon, Widow, and } Respondents.
Courthope Clayton, Esq;

The C A S E of the Respondents, Purdon and Clayton, (Executors, Devises, and
Residuary Legates of Henry Purdon, Esq; late his Majesty's Sergeant at Law in
the Kingdom of Ireland, decas'd) named as Respondents by Order of the House of
Lords, January 22. 1739.

10 July 1729.
Respondent's out-
Bill filed.

See 3 Q. Anne.

TH E said Henry Purdon exhibited a Bill in the Court of Exchequer in Ireland, in the Name (and by the Consent) of the Respondent George Foot, as a Protestant Informer, but in Trust for the said Henry Purdon; setting forth, That by an Act of Parliament made in Ireland in the second Year of her late Majesty Queen Anne, it is (amongst other things) Enacted, "That from and after the 24th Day of March 1703. every Papist, or Person professing the Popish Religion, shall, from and after the said 24th Day of March, be disabled, and is hereby made incapable to buy and purchase, either in his or their own Name, or in the Name of any other Person or Persons, to his or her Use, or in Trust for him or her; any Manors, Lands, Tenements or Hereditaments, or any Rents or Profits out of the same, or any Leases or Terms thereof, other than any Term of Years not exceeding 31 Years, whereon a Rent not less than two thirds of the improved yearly Value, at the Time of the making such Lease of the Tenements leased, shall be reserved and made payable during such Term; and that all and singular Estates, Terms, or any other Interests or Profits whatsoever, other than such Leases, not exceeding 31 Years, as aforesaid, of, in or out of such Lands, Tenements or Hereditaments, from and after the said 24th Day of March, to be bought and purchased by, or for the Use or Behoof of any such Papist, or Person or Persons professing the Popish Religion, or upon any Trust or Confidence, mediately or immediately, to or for the Benefit, Use or Advantage of any such Person or Persons professing the Popish Religion, shall be utterly void, and of none Effect, to all Intents, Constructions and Purposes whatsoever."

See 3 Anne.

And setting forth, That by another Act made in Ireland in the 8th Year of the late Queen Anne, it is (amongst other things) Enacted, "That whereas the former Acts have been most notoriously eluded by several Papists, and others in Trust for them, who have purchased several Lands, Tenements and Hereditaments, and taken Leases, contrary to the true Intent and Meaning of the said Act; and have also taken collateral and other Securities, by Mortgages, Judgments and Statutes, to cover, support and secure such their Purchases and Leases; for Remedy whereof, and for the better enforcing the Execution of the said Acts, it is Enacted, That all collateral and other Securities, by Mortgages, Judgments and Statutes Merchant, or of the Staple, or otherwise howsoever, which have been made or entered into, or hereafter shall be made or entered into, or to cover, support, secure or make good any Bargain, Sale, Confirmation, Release, Feoffment, Lease, or other Conveyance, contrary to the said recited Act, shall be, and hereby are declared null and void, and of no Effect, to such Person or Persons so purchasing any of the said Lands or Tenements in Trust for, or for the Benefit of any Papist, or Person professing the Popish Religion, as likewise to any such Papist or Person, his, her, or their Heirs and Assigns respectively; and that all such Lands, Tenements and Hereditaments so conveyed or leased, or to be conveyed or leased to any Papist, or Person professing the Popish Religion, or to the Use of, or in Trust for any Papist, or Person professing the Romish Religion, contrary to the true Intent and Meaning of the said Acts, and all such collateral Securities as are or shall be made or entered into, to cover, support, secure, or make good the same, shall and may be sued for by any Protestant or Protestants, by his, her, or their proper Action, real or personal, or mixed, founded on this Act, in any of her Majesty's Courts of Law, or in any Court of Equity, where the Nature of the Case shall require it; and the Plaintiff or Demandant, in such Suit, upon Proof that such Purchase or Lease was made in Trust for any Papist, or Person professing the Popish Religion, or for his, her, or their Benefit or Advantage, by receiving the Rents, Issues or Profits thereof, or otherwise, shall obtain a Verdict and Judgments, or a Decree thereupon, and shall receive the same, and have Execution to be put into the Seisin and Possession thereof, to hold and enjoy such Lands, Tenements and Hereditaments, according to the Estate, Use, Trust, Interest or Confidence, which such Papist, or Person professing the Popish Religion, had or should have had therein, had he, she, or they been qualified to purchase, hold, or enjoy the same, subject nevertheless to all such Rents, Covenants and Conditions, Reservations, and all Incumbrances and Portions whatsoever, as the same would have been subject to in the Hands of such Papist, or in the Hands of such Person to whom the same were sold or leased in Trust for such Papist, or Person professing the Popish Religion, or to his, her, or their Use, Benefit and Behoof; and shall also have the full Benefit of all such collateral Securities as the Party or Parties, to whom the same are or shall be made, might have had, if this or the former Act had not been made."

And suggesting that Maurice Roche, and James Roche his Son, or one of them, being seized of the Lands of Dundanion, and North and South Mahon, alias Ballynure, in the Liberties of Corke in Ireland, did, by several Deeds, and by Fine and Recovery, since the 24th of March 1703. viz. about September 1713. convey the same, in Consideration of about 1400 l. to the Appellant, or to his Father David Nagle, then and always profess'd Papist, in manifest Contempt of the said Laws: Wherefore the Respondent Foot, being a Protestant, born of Protestant Parents, did, by the said Bill, claim the said Lands as a Protestant Discoverer, and the Rents and Profits thereof since the pretended Purchase. And the Bill pray'd a Discovery of several fraudulent Deeds, and of several collusive Facts and Pretences therein charged, and of all other Deeds, to have them brought into Court, and to have the Benefit of the said Acts.

The Respondent Foot made and annexed to the said Bill the usual Affidavit; "That he was, and always had been, a Protestant of the Church of Ireland: And that the said Bill is not in Trust for any Papist."

The Appellant put in his first Answer, insisting, That David Nagle, his Father, had an absolute Title in him in Fee, by several Mortgage Deeds, made in 1687 and 1695; and being sensible that his Lands were to be gravell'd, (or divided amongst his Sons by former Acts of Popery) devised them between the Appellant and Garret Nagle, his Brother, whom he admits to be a Papist; but tho' the Appellant was a Papist, (which he avoids answering directly) "Yet having the Inheritance before the Popery Acts, was capable of taking a Release of, and might have foreclosed the Equity of Redemption; but hopes, if the Court should be of a contrary Opinion, that the Appellant may be allowed all Debts, Incumbrances, and other Interest he was intitled to before the Release of the Equity of Redemption; and also for all such Improvements as were made by him, or any deriving under him, before the Respondent Foot shall be decreed to the Possession of the Premises."

21 April 1739.
Defendant's first
Answer filed.
17

And

And insists, that the Lands of Dundanon, being an entitled Estate, were mortgaged to him for 300 l. March 22.

3 Geo. 1.

1703. (*Two Days before the first Popery Act took Place*) but that the Deeds are burnt.
Sets forth several Leases, Annuities, and other Incumbrances (serving only to perplex the Title); but insists,
“ If the Court should be of Opinion, that *David Nagle*, his Father, was any ways incapable of taking the Release
“ of the *Equity of Redemption*; yet, by a late Act in Ireland, ’tis Enacted, That if any Mortgagee of any Lands, &c.
“ hath been in Possession thereof for twenty Years and upwards, and the Mortgagee, or Person entitled to the Equity
“ of *Redemption* thereof, hath permitted the Mortgagee, his Heirs or Assigns, to continue in Possession of the
“ mortgaged Premises without bringing a Bill to redeem, or for an Account; and did not, before the 29th of September
“ 1723. commence a Suit in Equity for Redemption or Recovery of the mortgaged Premises, and prosecute the
“ same with Effect, the Person claiming Interest in the said Mortgage, may, in all Courts of Equity, plead such
“ Possession in Bar of any Relief; and such Mortgagee, his Heirs and Assigns, shall hold the mortgaged Pre-
“ mises discharged from all Equity of Redemption.” And says, “ That as the said *David Nagle*, and those deriving under
“ him, have been in Possession of the said Lands upwards of twenty Years before making the said Act, without ever
“ having any Bill brought against any of them to redeem the said Lands, or for an Account; and that the Plaintiff, nor
“ no other Person, brought any Bill for Redemption or Recovery of Possession of the said Lands, till several Years
“ after the said 29th of September 1723. the Defendant humbly insists on the Benefit of the said Statute; and con-
“ ceives he is thereby intitled to hold the said Lands discharged from all Equity of Redemption.— Says, That
“ by a *cross Bill*, then preparing against the Respondent *Foot* and others, ’will appear that they are in Combination
“ against the Appellant, and not the Appellant against *Foot*; and insists again on his and his Father’s long
“ Possession.”

10 Nov. 1730.
Second Answer.

The Appellant put in his further Answer; wherein he set forth, and insisted on several sorts of Conveiances of the said Estates, some of which appear to be inconsistent, together with others, manifestly calculated to elude both the said Acts, and others openly and directly in Opposition to them. On all which, “ besides other Incum-
“ brances due on Record from *Mau. Roche* to the Appellant’s Father; the Benefit of which he insists on—says,
“ he can’t precisely set forth what Sum was paid for the Consideration of the Release of the Equity of Redemption; but
“ the Deed expresses 1400 l.—Says, That his Father, by his Will, devised all his Right, Title and Interest in the
“ Premises, to the Appellant, in Tail Male, with a Remainder in Tail Male, to his Brother *Garret*. ”

By this Answer he confesses, “ That he is of the Roman Catholic Religion: But whether that be the Popish
“ Religion, or makes him a Papist, or Person professing the Popish Religion, submits to the Court, or to the
“ Opinion of Divines.”

Insists again, That his Father was not made incapable by the said Acts to take a Release of the Equity of Redem-
“ tion; but if the Court should be of a contrary Opinion, then he insists on his long Possession.

3 June 1731.
Appellant’s third Answer.

The Appellant put in a third Answer, wherein he thought fit to own himself a Papist, and that *David Nagle* his Father took the Benefit of the Articles of *Limerick* about 1691; that he registered the Lands of Dundanon as his own real Estate; and that his Father agreed with him for a Lease of Ballynure for 31 Years at 50 l. per Annum; upon which Premises he entered accordingly about 1710 or 1711, and set forth several Leases and Agreements made with the Tenants or Occupiers.

He knows not, but believes that he did (about the Time that he purchased the Equity of Redemption of Ballynure) perfect a Bond to *Maurice Roche* for 1175 l. on Account of that Purchase; but can apprehend no Reason for it, in regard the Consideration of that Deed is but 710 l. and believes he paid whatever he promised to pay *Roche*. And

22 April 1734.
Cross Bill.

Admits several Deeds exhibited to him by the Respondent’s Solicitor (which till this Answer he evaded). And

8 Georg. 1.

“ Act for quieting Mortgages in their Possessions, he and his Brother *Garret* (as Heirs in *Gravelkind*) are well
“ intitled to hold the Premises.”

17

And charges, That all the said Defendants combined to be vexatious to him, and to bring the original Bill, which

was exhibited, in *Foot*’s Name, without his Privy or Direction, in Trust for some Person intended to be examined as a

Witness, and not qualified to enjoy the same, tho’ *Foot* now agrees thereto.

The Defendants put in their several Answers, particularly the Respondent *Foot* and his Sons, to which Mr. *Nagle* (for Delay only) took Exceptions twice:— “ Says he knows not when the original Bill was filed, but refers to it: Says that

10 May 1736.
Foot’s third Answer.

But *Foot*’s last Answer is thus:— “ Says he knows not when the original Bill in his own Name and Right, but was dead)
“ on the Death of one *Robert Morrison*, (who had brought a former Bill in his own Name and Right, but was dead)
“ Sergeant *Purdon*, by Letter, desired the Respondent *Foot* to give him Leave to make use of his Name therein, which

“ he did and does consent to; and says the original Bill is filed by *Foot*. ” In Trust for and to the entire Use
“ of the Defendant *Purdon*; and that he may give it to whom he pleases; and believes Mr. *Purdon* will be kind to the *Morris-*
“ *Henry Purdon*; and that by his Letter to the said *Henry Purdon*, he agreed to have his Name made use of, in Trust

“ for him; and he is and always was ready and willing to declare the said *Foot*. ”
“ that this Defendant will prosecute the said Suit for the sole Benefit of the said *Purdon*. ”

Decem. 1737.

After these Answers, the Appellant thought fit to proceed no further in the said Cross-cause.
The said *Henry Purdon* died, devising all his real and personal Estates to the Respondents *Purdon* and *Clayton*,
except some Legacies, particularly 1000 l. to *Morrison*’s Family out of what should be recovered from the Appellant’s

January 1737.

Estate.
The Appellant began to examine his Witnesses at *Dublin*, and by Commission at *Cork*; and obtained another
Commission into *England*, to examine several Witnesses at *Chester*; and amongst the rest he thought fit to examine

12 July 1738.
A new Bill brought in the Name of Hop-
den.

James Roche to prove the Hand-writing of his Father *Maurice*, and the Deponent’s Uncle *Patrick Roche*, under
whom the Appellant endeavours to make Title, by Mortgage and Release of the Equity of Redemption.
But the said *James Roche* being cross-examined, says, “ That by the Threats of *Maurice Roche*, and *Philip*
“ *Roche*, (his Nephew) who were in the Confederacy with the Appellant *Nagle*, the Deponent *James Roche*, in
“ September 1713, being then in *Dublin*, was prevailed on to sell the same Premises to the said *Nagle*, the Deponent
“ having no other Motive or Consideration, than the Threats, Management, and Contrivance aforesaid; and
“ believes the Premises are, and, for 18 Years last, have been worth 500 l. or 600 l. a Year, to be let to a solvent

“ Tenant.”

The Appellant thought fit to procure a Bill to be filed in the said Court of Exchequer in *Ireland*, in the Name of

one *Thomas Hopson*, as the first Protestant Discoverer; and wherein the Title of the said Respondent *Foot* and Mr.
much in the same manner as in his Answers; and setting forth the Trust between the Respondent *Foot* and Mr.
Purdon, and the Substance of Sergeant *Purdon*’s Will, and that he has not bequeathed one Farthing to the Respondent
Foot: That by Mr. *Purdon*’s Death the Suit is abated, and his Will void; for no Interest being vested in him, there
was nothing to operate upon with respect to these Lands; and praying a Discovery, and that the further Proceedings
in the original Cause might be stayed: And to this Bill the Respondents *Purdon* and *Clayton*, and their Solicitor, and
Mrs. *Morrison*, were made Defendants.

The

The Appellant not being able by his Artifice of *Hoplon's* Bill to stop the original Cause (which was before set down) from being heard in its Court;

The Cause came on to be heard; and the then Plaintiff, now Respondent *Fool*, having made out his Case, the Counsel for the (now) Appellant objected, *That the Representatives of Mr. Sergeant Purdon, for whom only Fool had acknowledged himself to be a Trustee, were not before the Court*; and the Crois Bill, and the Defendants Answers, were read by them to make out the Objection.

By the Opinion of the whole Court, the Objection was over-ruled.
The Court proceeded both these Days, and went thro' the Evidences on both Sides.

The Cause stood again in the Paper, and it was expected that the Court would have given Judgment, and made their Decree; but all their Counsel for the Appellant, to divert the Court from giving Judgment, objected, for want of Parties; viz. the Representatives of *Garret Nagle, the Appellant's Brother, (a conjeſs Papift) of James Nagle,* and one *Lambert*, in whom a supposed undetermined Lease in Trust for them was vested; but it being the last Day of Hearings before *Hilary* Term, the then Attorney-General of Counsel with the Bill, being engaged Part of that Day elsewhere, the Cause was directed to stand over till the next Term.

The Appellant being, as is supposed, advised, or perceiving the Court were strongly inclined to over-rule all his Objections, and to make a Decree in favour of the Plaintiff *Fool*, as may be collected from their Minutes, found means before the then next Term to make an Agreement with *Fool*, and thereupon to obtain a Warrant of Attorney under his Hand and Seal, dated the 1st of *January* 1738, "directed to his Solicitor, or to any other Solicitor of the Court of Exchequer in *Ireland*, to consent to dismiss the original Bill; and thereby releases and discharges the Appellant from the said original Bill, and all Suits, Proceedings, and Demands in the said Bill."

The Appellant's Solicitor gave Notice, "That when the Cause should be called, he intended to move, That the Cause might be postponed, or that the Bill should be dismissed."

On the 27th and 29th of *January*, as also on the 15th of *February*, the Court was moved, and the Motion put off till the 23d Day of *February* 1738; when on reading the former Orders and Proceedings, and hearing the Council for the Appellant, and for the Respondent, and several Affidavits, "It is ordered, That the Time for shewing Cause against receiving the said Consent or Warrant of Attorney be, and the same is hereby enlarged until the first Day of the next *Easter* Term; and it is further ordered, That the Plaintiff *George Fool* do then attend the Court."

Instead of waiting to take the Judgment of the Court upon the said Motion, the Appellant thought fit, before the then next *Easter* Term, to appeal from the said Orders; so that from that Time the Court of Exchequer in *Ireland* have been stopped from going on with the said Cause: Yet the Plaintiff *Hoplon* hath thought fit to proceed in his Cause, and to threaten the Defendants with Process of Contempt for not answering; and in order to be sure of reversing the Order, or at least to get so much longer Delay in hearing the Cause, the Appellant made no Party Respondent but the said *George Fool*, and procured an Answer from him; whereby he doth in no sort pray or insist on the Affirmance of the said Orders and Proceedings; so that the Respondents *Purdon* and *Clayton* were forced to apply by Petition to the House of Lords for an Order that they might be admitted as Respondents to defend the Appeal, which was accordingly granted. And the Respondents humbly hope, That this is a very improper Appeal, for the following, among many other,

27 Nov.
4 and 5 Dec.
6 Dec.

1 Jan. 1738.
Warrant to dismiss the Bill.

24 Jan. 1738.

23 Feb. 1738.
Order appealed from.

Appeal lodged
4 April 1739.

22 Jan. 1739.

R E A S O N S.

I. Because the Court of Exchequer have given no Judgment as to the Motion made by the Appellant, but only given Time to the Party to shew Cause against it till the then next *Easter* Term; and it is apprehended to be unprecedented to appeal from an Order, only granting Time to shew Cause; which, if allowed of, must tend to great Vexation, and infinite Delay; and nothing can be more reasonable than to allow every Court of Justice to be the proper Judges of the Time and Manner of giving their Judgment; and it is plain, this Motion was no other than an Artifice to stay the pronouncing the Decree.

II. Because on the Merits of the Cause, as a Bill cannot be dismissed without the Leave of the Court, it can hardly be imagined, that a Court of Equity would suffer a Trustee (who had in three Answers on Oath accepted of the Trust, and in all other things acted therein in two Causes then depending in that Court) to have either quitted or made a Breach of that Trust, for no other Reason or Purpose but that of eluding the Justice of that Court; which in this Case would also affect and endanger the Constitution of that Kingdom; and it is most plain from the Affidavits read upon the Motion, That the signing that Instrument was nothing else but a Collusion between the Appellant and the Respondent *Fool*, to defraud the other Respondents by a notorious Breach of Trust.

For which Reasons, among many others, the Respondents humbly hope the Appeal shall be Dismissed with Exemplary Costs.

D. RYDER.
W. NOEL.

Joseph Nagle, Esq; - - Appellant.

George Foot, Penelope Purdon, Widow, and Cour-
thope Clayton, Esq; } Respondents.

The CASE of the Respondents,
Purdon and Clayton.

To be Heard at the Bar of the House of
Lords, on Wednesday the 12th Day
of March, 1739-40.

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Costs it not being properly
brought

